4-619

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~227.~~ 33

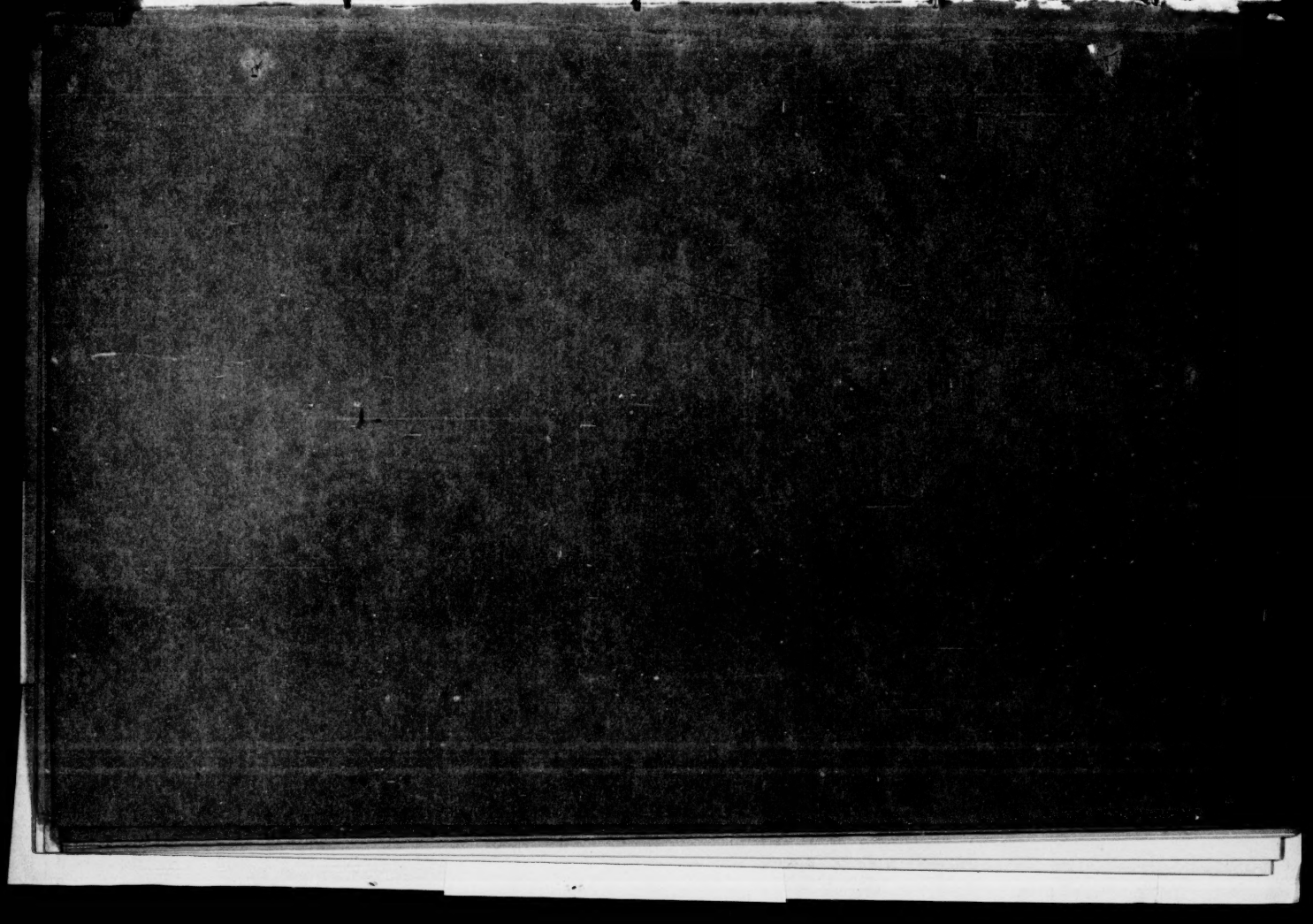
THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

JUAN SANTISTEVAN.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED AUGUST 15, 1874.



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1 The Supreme Court of the United States have sent to the judges of the supreme court of the Territory of New Mexico their writ; which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorables the judges of the supreme court of the Territory of New Mexico greeting:

Because in the record and proceedings, as also the rendition of judgment in a plea of debt which is in the said supreme court before you, between the United States of America and Juan Santistevan, manifest error hath intervened, to the damage of the said United States of America, as by this complaint appears, and we being willing that the error, if if any there hath been, should be duly corrected and speedy justice done to the parties aforesaid in this behalf, do hereby command you, if final judgment be therein given, that then and under your seal, distinctly and openly, you send the record and proceedings aforesaid, with
2 all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, at the term of said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Nathan Clifford, senior associate justice of the Supreme Court of the United States, this 26th day of January, A. D. 1874.

Issued at office in the city of Santa Fé, N. M., with the seal of the supreme court of the Territory of New Mexico.

R. J. PALEN,
Clerk Sup. Ct. Terr. N. M.

Allowed January 26th, A. D. 1874.

J. G. PALEN,
Chief-Justice Sup. Ct. N. M.

3 (Which writ is endorsed:) Filed in my office this 26th day of January, A. D. 1874. R. J. Palen, clerk sup. ct. N. M.

The answer of the judges of the supreme court of the Territory of New Mexico to the foregoing writ is contained in the transcript hereto annexed.

By the court.

R. J. PALEN, *Clerk.*

Transcript.

Pleas in the supreme court of the Territory of New Mexico, at a regular term, begun and held within and for said Territory at the city of Santa Fé, on the fifth day of January, A. D. 1874; present, the Hon. Joseph G. Palen, chief-justice, Hon. Hezekiah S. Johnson and Hon. Warren Bristol, associate justices.

Be it remembered that heretofore, to wit, on the eighteenth day of October, A. D. 1873, the following transcript was filed in the
4 office of the clerk of said supreme court; which transcript is in the words and figures following, to wit:

The supreme court of the Territory of New Mexico have sent to the

judge of the district court for the first judicial district of the Territory of New Mexico their writ, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

The President of the United States of America, to the honorable judge of the district court for the first judicial district of the Territory of New Mexico, greeting:

Because in the record and proceedings, as also the rendition of judgment, in a plea which is in the said district court, before you, between the United States of America, plaintiff, and Juan Santistevan, defendant, in an action of debt on statute, manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears; and we being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do hereby command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the supreme court of the Territory of New
5 Mexico, together with this writ, so that you have the same at Santa Fé, on the first Monday of January next, at the said supreme court to be then and there held that, the record and proceeding aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the Hon. Joseph G. Palen, chief-justice of the said supreme court, and the seal of the said court, at Santa Fé, New Mexico, this 18th day of October, A. D. 1873.

[SEAL.] R. J. PALEN, *Clerk.*

The answer of the judge of the district court for the first judicial district of the Territory of New Mexico to the foregoing writ is contained in the record hereto annexed.

R. J. PALEN,
Clerk District Court.

Record.

6 Pleas in the United States district court for the first judicial district of the Territory of New Mexico, at a regular term, begun and held within and for said first judicial district at the city of Santa Fé, on the fourteenth day of July, in the year one thousand eight hundred and seventy-three, on the nineteenth day of said term, being the fourth day of August, A. D. 1873, the Hon. Joseph G. Palen, chief-justice of the supreme court of said territory, and judge of the first judicial district court thereof, presiding:

THE UNITED STATES OF AMERICA,
vs.
JUAN SANTISTEVAN. } 173. Debt on statute.

Be it remembered that heretofore, to wit, on the thirtieth day of June, A. D. 1873, the said plaintiffs, by Thomas B. Catron, esq., their district

attorney, filed in the clerk's office of said district court their petition; which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Territory of New Mexico, First Judicial District:

In the district court for the first judicial district of New Mexico,
7 sitting for the trial of causes arising under the constitution and laws of the United States, at the July term, A. D. 1873.

To the Hon. Joseph G. Palen, chief-justice of the supreme court of the Territory of New Mexico, and judge of the first judicial district court thereof:

The United States of America, who sue for themselves in this behalf, by Thomas B. Catron, their attorney, who prosecutes for them, within and for the Territory of New Mexico, complain of Juan Santistevan, a resident of the county of Taos, in the said first judicial district and Territory aforesaid, that he render unto the said United States, who sue as aforesaid, the sum of one thousand dollars, which he owes to and wrongfully detains from the said United States: For that whereas the said defendant heretofore, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, at, to wit, the first judicial district of the Territory of New Mexico aforesaid, did make a settlement on and now occupies and is settled on lands of the Pueblo tribe of Indians of the pueblo of Taos, situated in the county of Taos, in said district and Territory, said lands being described as follows,
8 to wit: Commencing at a stone, with mound of stones, standing two miles forty-eight and thirty-three and third hundredths chains west from the cross in the cemetery of said Pueblo Indians, in said county of Taos, and running thence south two miles forty-eight and thirty-three and one-third hundredths chains to a stone, with mound of stones and earth, at the southwest corner of said lands; thence east five miles sixteen and sixty-six and two-thirds hundredths chains to the southeast corner of said lands; thence north five miles sixteen and sixty-six and two-thirds hundredths chains to the northeast corner of said lands; thence west five miles sixteen and sixty-six and two thirds hundredths chains to the northwest corner of said lands; thence two miles forty-eight and thirty-three and one-third hundredths chains to the place of beginning, to wit, on ten acres of said lands, by then and there building houses and making fields thereon, contrary to the form of the statute in such case made and provided, said lands then and there and at the time of beginning this suit belonging to the said Pueblo tribe of Indians, of the pueblo of Taos aforesaid and secured to the said Pueblo tribe of Indians of the pueblo of Taos aforesaid, by patent from the United States.

9 Whereby, and by force of the statute in such case made and provided, an action hath accrued unto the said United States, who sues as aforesaid, to demand and have of the said defendant, for herself, the sum of one thousand dollars, which the said defendant has forfeited and became liable to pay to the United States for his said offence, the same being the amount imposed by said statute for the settling on lands belonging, secured, or granted by treaty with the United States to any Indian tribe, and which said sum of one thousand dollars he, the said defendant, hath wholly neglected and refused, and still does neglect and refuse, to pay the said United States.

The said United States, plaintiff, as aforesaid, therefore brings suit

and ask judgment of this hon. court against said defendant for said sum of one thousand dollars, together with costs of suit.

T. B. CATRON,
U. S. Dist. Atty. for N. M.

And afterwards, to wit, on this thirtieth day of June, A. D. 1873, a writ issued out of and under the seal of said district court; which said writ is in the words and figures following, to wit:

10 The President of the United States of America to the United States marshal for the Territory of New Mexico, greeting:

You are hereby commanded to summon Juan Santistevan to be and appear before the United States district court for the first judicial district of the Territory of New Mexico, to be begun and held at the county of Sante Fé, in said Territory, at the court-house of said county, on the second Monday of July, A. D. eighteen hundred and seventy-three, to answer unto the United States in an action of debt on statute—amount claimed one thousand dollars, with costs of suit, and have you then and there this writ.

Witness the Hon. Joseph G. Palen, chief-justice of the supreme court and judge of the said district court of said Territory, and the seal of said district court, this 30th day of June, A. D. 1875.

[SEAL.] M. A. BREEDEN, *Clerk.*

And which writ was endorsed as follows, to wit:

This is an action of debt on statute for illegally settling on Indian
11 lands of the tribe known as Pueblo Indians. Damages claimed one thousand dollars and costs of suit.

M. A. BREEDEN, *Clerk.*

And afterwards, to wit, on the third day of July, A. D. 1873, the said marshal made return to the said writ, which return was filed in the clerk's office of said district court on the seventeenth day of July, A. D. 1873, and is in the words and figures following, to wit:

"I certify that I have served the within summons by delivering a true copy of the same to the within-named Juan Santistevan, at Taos, N. M., July 3d, 1873.

"JNO. PRATT,
" *U. S. Marshal.*
"By FELIPE ROMERO,
"*Deputy.*"

And afterwards, to wit, on the twenty-second day of July, A. D. 1873, the said defendant, by his attorney, filed in the clerk's office of said district court his demurrer to the petition of the said plaintiffs; which demurrer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico:

12 First judicial district court, July term, 1873.

THE UNITED STATES
vs. } Debt.
JUAN SANTISTEVAN.

And the said defendant, by his attorney, comes and defends the

wrong and injury, when, &c., and says that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this he is ready to verify. Wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against him, etc.

And the said defendant states and shows to the court here the following causes of demurrer to the said declaration:

First. The said declaration shows that in case said lands belong to any Indian tribe, they belong to Pueblo Indians, who are citizens of the United States, and not such Indian tribes as is contemplated by the statute of the United States.

13 Second. That said declaration shows that said lands were secured to the said Pueblo Indians by patent from the United States, containing the same conditions, powers, and authorities to the said patentees to transmit and convey their said lands as is given to any other citizens of the United States, and does not show that said lands have never been sold, transferred, or conveyed by said Pueblo Indians.

And also that the said declaration is in other respects uncertain, informal, and insufficient, etc.

WM. BREEDEN,
Attorney for Defendant.

And afterwards, to wit, on the same day and year last aforesaid, the said plaintiffs, by their district attorney, filed in the clerk's office of said district court their joinder in demurrer; which is in the words and figures following, to wit:

UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN. } Debt.

In the United States district court for the first judicial district of the Territory of New Mexico, July term, A. D. 1873.

14 And the plaintiffs say that the said petition and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for them, the said plaintiffs, to have and maintain their aforesaid action thereof against the said defendant, and the said plaintiffs are ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the said defendant has not answered the said petition, nor hitherto in any manner denied the same, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof to be adjudged to them, etc.

T. B. CATRON,
U. S. Attorney for N. M.

And now on this day, to wit, on the same day and year first aforesaid,

the following judgment is rendered and entered in the above-entitled cause; which judgment is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN. } 173. Debt on statute.

This cause came on to be heard upon the demurrer of the said Juan Santistevan to the petition of the said United States of America,
15 and was argued by counsel, and the court, being fully advised in the premises, is of opinion that the said petition and the matters therein contained are not sufficient in law to maintain the action of the said United States of America against the said Juan Santistevan. Therefore it is considered that the said demurrer be and the same is hereby sustained, and that the said Juan Santistevan go hence without day.

And afterwards, to wit, on the fourth day of August, A. D. 1873, the said plaintiffs filed in the clerk's office of said district court the following motion for writ of error from the said final judgment in this cause; which motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN. } Debt.

In the United States district court, first judicial district, Territory of New Mexico, July term, 1873.

Now come the said plaintiffs, by their attorney, and move the court to grant a writ of error in the above-entitled cause to supreme court of the Territory, from the final judgment rendered in said cause in
16 the district court on the demurrer.

T. B. CATRON,
U. S. Atty.

And afterwards, to wit, on the same day and year last aforesaid, at the said term of said district court, the following order was made and entered in this cause; which order is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN. } 173. Debt on statute.

And now come the said United States of America, by their district attorney, and pray for a writ of error from the judgment rendered in this cause, to the supreme court of the Territory of New Mexico, which is hereby allowed to them.

TERRITORY OF NEW MEXICO:

United States district court, first judicial district.

I, Rufus J. Palen, clerk of the United States district court for the first judicial district of the Territory of New Mexico, do hereby certify that the foregoing twelve pages co'tain a true and complete record of the judgment and proceedings in the above-entitled cause, as remain of record in my office.

17 In testimony whereof I have hereunto set my hand and the seal of said court, this 17th day of October, A. D. 1873.

[SEAL.] RUFUS J. PALEN, *Clerk.*

And be it further remembered that afterwards, to wit, at the supreme court first aforesaid, on the first day of said term, the following order was made and entered in this cause, and in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, PLFFS. IN error,
vs.
JUAN SANTISTEVAN.
} 69. Error. First judicial district. C. J. Palen.

Upon application of the said plaintiffs in error by their district attorney, the counsel for said defendant in error consenting thereto, the time for filing the assignment of errors, and briefs required by the rules of this court is extended till Monday next, and a like extension to two days thereafter granted to said defendant in error to file joinder in error

And afterwards, to wit, on the twelfth day of January, A. D.
18 1874, the said plaintiffs in error filed, in the clerk's office of said court, the following assignment of error; which is in the words and figures following, to wit:

Assignment of errors.

Supreme court, January term, 1874.

THE UNITED STATES
vs.
JUAN SANTISTEVAN.

And the said plaintiffs, by their attorney, T. B. Catron, now comes and says that, in the record and proceedings aforesaid, there is manifest error, in this, to wit:

The court below erred in rendering judgment on the demurrer in favor of the defendant instead of in favor of plaintiffs, as by the law of the land it should have been given.

Wherefore the said plaintiffs pray that the said judgment may be reversed, annulled, and held for naught, and that he may be restored to all things he has lost by reason thereof.

T. B. CATRON,
Atty. for Plffs.

And afterwards, to wit, on the fifteenth day of January, A. D.
19 1874, the said defendant in error, by his counsel, filed in the clerk's office of said court his joinder in error, in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO:

Supreme court, January term, A. D. 1874.

THE UNITED STATES
vs.
JUAN SANTISTEVAN, DEFT. IN ERROR.
} Debt on statute.

Error from 1st judicial district court.

And the said defendant in error says that there is no error in the record.

WM. BREEDEN,
Atty. for Deft. in Error.

And afterwards, to wit, on the eighth day of said term, being the thirteenth day of January, A. D. 1874, the following order was made and entered in this cause, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, PLFF. IN error,
vs.
JUAN SANTISTEVAN.
} 69. Error to first judicial district.

This cause is now set down for argument on Thursday next.

And afterwards, to wit, on the tenth day of said term, being
20 the fifteenth day of January, A. D. 1874, the following order was made and entered in this cause, and in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN.
} Error to first judicial district.

This cause now came on to be heard and was argued by the U. S. district attorney for the plaintiffs in error, and by counsel for defendant in error, and the argument being concluded, is now submitted to the court for its decision, and the court not being sufficiently advised in the premises takes the same under advisement.

And afterwards, to wit, on the nineteenth day of said term of said court, being the 26th day of January, A. D. 1874, the following judgment was rendered and entered in this cause; which judgment is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN.
} 69. Error to first judicial district.

This cause having been argued by counsel and submitted at a former day of this term, and having been then taken under advisement,
21 the court being now fully advised in the premises, announces its decision, by Associate Justice Johnson, affirming the judgment of the court below.

It is therefore considered and adjudged, that the judgment of the United States district court for the first judicial district in this cause be, and the same is hereby, affirmed.

Opinion filed by Associate Justice Johnson.

And afterwards, to wit, at the term and on the day and year last aforesaid, the following order was made and entered in this cause, and in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JUAN SANTISTEVAN.
} 69. Error to first judicial district.

On application of the said plaintiffs in error, by their district attorney, it is ordered that a writ of error herein be, and the same is hereby, allowed.

TERRITORY OF NEW MEXICO, *ss:*

I, R. J. Palen, clerk of the supreme court of said Territory, do hereby certify that the foregoing twenty-one (21) pages contain a full,
22 true, and perfect record of the judgment and proceedings in the above-entitled cause, as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Santa Fé, N. M., this 27th day of January, A. D. 1874.

[SEAL.] R. J. PALEN, *Clerk.*

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to Juan Santistevan, greeting:

You are hereby cited and admonished to be and appear at the term of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein the United States of America are plaintiffs in error, and Juan Santistevan is defendent in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Joseph G. Palen, chief-justice of the supreme court of the Territory of New Mexico, at Santa Fé, N. M., this 26th day of January, A. D. 1874.

J. G. PALEN,
Chief-Justice of the Supreme Court of the Territory of New Mexico.

(Indorsed:) United States vs. Juan Santistevan. Citation and proof of service.

Due service of the within citation is hereby admitted.
January 26th, 1874.

WM. BREEDEN,
Atty. for Defendant in Error.

(Indorsement on cover:) No. 227. The United States of America, plaintiffs in error, vs. Juan Santistevan. New Mexico Terr'y sup. court. Filed 15th August, 1871.

REC. 227—2

4-619

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES *vs.* ANTONIO JOSEPH. } No. 226.

THE UNITED STATES *vs.* JUAN SANTISTEVAN. } No. 227.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES
vs.
ANTONIO JOSEPH. } No. 226.

THE UNITED STATES
vs.
JUAN SANTISTEVAN. } No. 227.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

Brief for the United States.

The above cases are alike, each standing upon an assignment of error in a judgment upon an issue of law, raised by a demurrer to a declaration in debt.

In each case the declaration seeks to recover $1,000, *for that* the defendant heretofore, to wit, &c., at, &c., "did make a settlement on, and now occupies and is settled on, lands of the Pueblo tribe of Indians, of the pueblo of Taos, situated in the county of Taos, in said district and Territory, said lands being described as follows, to wit: commencing at a stone," &c., &c., "to wit:

on ten acres of said lands, by then and there building houses and making fields thereon, contrary to the form of the statute," &c., said lands then and there belonging to the said Pueblo tribe of Indians, and secured to them by patent from the said United States.

To this declaration the defendant demurred; and for cause thereof showed (1) that it appears by the declaration that *in case said lands belong to any Indian tribe, they belong to the Pueblo Indians who are citizens of the United States*, and not to such Indian tribes as are contemplated by the statute; and (2) that it also appears by the declaration that said lands are secured to the Pueblo Indians by patent, containing the same conditions, powers, and authorities to transmit and convey their lands as is given to other citizens of the United States, and does not show that such lands have never been sold, transferred, or conveyed by said Pueblo Indians.

Such demurrer having been sustained by the district court, and again by the supreme court of the Territory, the latter judgment has been brought here by writ of error.

For error, the United States assign the giving of such judgment for the defendant instead of for the plaintiff.

The statutory provision upon which this suit was brought is that of 1834, ch. 161, sec. 11, (4 Stat., 730; also Rev. Stat., sec. 2118,) applied to New Mexico by act of 1851, ch. 14, sec. 7, (9 Stat., 587,) and is as follows:

"That if any person shall make a settlement on any lands belonging, secured or granted by treaty with the United States to any Indian tribe, or shall survey or

shall attempt to survey such lands or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars."

The question presented is, whether such provision applies to "the Pueblo tribe of Indians of the pueblo of Taos," in New Mexico, who hold their lands by a patent granted to them by the United States *in their capacity as a tribe.*

Whether any Indian, or tribe or band of Indians, has made such progress in civilization as to render it proper to relieve him or them from the tutelage imposed by the general Indian *intercourse* provisions of the laws of the United States, is a political question, of which Congress alone can take cognizance.

Whether any Indian, or tribe or band of Indians, comes within the statutory provisions by which Congress has defined the conditions of relief from such tutelage, is a matter of simple interpretation or construction.

It is suggested in the demurrer that inasmuch as Pueblos are "citizens of the United States," they are not regulated by the statutes in question. This suggestion is not admissible, because *all Indians* "born in the United States and subject to the jurisdiction thereof" are such *citizens*, (fourteenth amendment,) and the above conclusion, that citizenship of itself relieves from tutelage, is shown to be erroneous by the extent to which it must operate, if at all.

I have examined the Statutes at Large to learn whether there has been legislation conferring a special

character upon the Pueblo Indians, but have not been able to find such. Their name suggests some distinction between them and the ordinary class of Indians. But I do not see that *Congress has recognized that distinction* as one entitling them to the *dangerous exemption* now proposed. It seems, as suggested above, that it is one that must be recognized by Congress before it can be administered by the courts.

It is important to observe (1) that these Indians are still in a tribal condition, and (2) that the lands in question were granted to them as a tribe.

I. The general policy of the United States seems to be to regard *a desire to abandon the tribal condition* as a test of progress toward civilization; and to foster that desire by giving to those by whom it is manifested lands *in severalty*. The volume of "Indian Treaties" contains numerous instances of conveyances in severalty to Indians wishing to emerge from the savage state; and the act of 1862, ch. 101, (Rev. Stat., sec. 2119,) makes a general provision for the protection of all such. It is therefore submitted that the circumstance that the Indians in question are living together as a tribe, or band, as admitted by the demurrer, carries with it a *presumption in law* that they are within the policy of the Indian intercourse acts; and that such policy preserves and protects them in every particular not expressly provided for by other legislation.

II. The circumstance that the lands mentioned in the declaration were conveyed by patent *to the tribe* is also to the same general effect. It is a recognition of them by the United States as being, upon the whole, (with

whatever minor qualifications,) in that peculiar condition designated as *the tribe.*

Nothing is said in the declaration as to special provisions in the patent in question. The use of a patent for conveying title to the Pueblos, suggests that such title was intended to be more than the usual Indian *occupancy.* But it leads to no presumption that the tribe may sell the lands to strangers or that a reversion therein is not left in the United States. It is submitted that a dealing with the tribe, as such, occasions a presumption *that in all respects not expressly otherwise provided for, the lands so given remain Indian lands according to the general meaning of that phrase.*

"If the tribal organization is preserved intact, and recognized by the political department of the Government as existing, then [the Pueblos] are 'a people distinct from others.' * * If they have outlived many things, they have not outlived the protection afforded by the Constitution, treaties, and laws of Congress." (The Kansas Indians, 5 Wall., 737, p. 755.)

In a case before Attorney-General Black in 1857, touching the title and rights acquired by the band known as the Christian Indians, under a patent for land issued by the United States, that officer used the following language:

"To the second question I have to reply that after these lands shall be confirmed to the Christian Indians by patent, they will not hold them by the usual Indian title. * * They will hold like any other purchaser from the Government. * * But I think the patent will vest the title in the tribe. * * No private person ever could make a lawful purchase of land from any Indian nation residing within the territory or under the protection of the United States."

He then cites the statute now before the court as one of the protections of the Christian Indians—whose peculiar situation, by the way, renders the opinion of Attorney-General Black, so far as it is at all entitled to attention by this tribunal, specially applicable to the case of the Pueblos. That opinion was given in reply to an application for advice by the Secretary of the Interior, and may be regarded as high evidence of the course of action in like cases by the Indian Department ever since. (9 Opinions of Attorney Generals, 24.)

It would be a cruel mistake to suppose that Indians who show a disposition to become civilized, do not need for their tottering steps special aid and guidance by the Government. We have high authority for believing that in youth, *contagious blastments* are most imminent; and there is nothing about the youth of civilized habits and institutions to make that an exception.

I know nothing to the personal disparagement of the defendants here, but the class of *settlers* whom they represent will ill supply by their company and attention, the absence of the special guardianship of the United States, manifested by legislation of which the above section is a sample. Such exchange will, for the most part, according to the old saying, be no less than "*agnum lupo tradere, ad devorandum.*"

S. F. PHILLIPS,
Solicitor-General.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

THE UNITED STATES,
Plaintiffs in Error,

vs.

ANTONIO JOSEPH.

No. 226.

STATEMENT.

This is an action of debt for a statutory penalty brought by the United States against the defendant in error, in the First Judicial District Court of the Territory of New Mexico.

The petition shows, as the cause of action, that the defendant "did make a settlement on, and now occupies and is settled on, lands of the Pueblo tribe of Indians of the Pueblo of Taos" (describing a tract some five miles square), "to wit, on ten acres of said lands, by then and there building houses and making fields thereon, contrary to the form of the statute, &c., said lands then and there, and at the time of bringing this suit, belonging to the said Pueblo tribe of Indians

of the Pueblo of Taos aforesaid, and secured to the said Pueblo tribe, &c., by patent from the said United States." Rec., fols. 5–7.

To this petition the defendant demurred, assigning as causes of demurrer:

(1.) That the petition shows that the lands belong to *Pueblo Indians*, who are citizens of the United States, and not to such Indian tribes as the statute contemplates.

(2.) That the petition shows that said lands have been conveyed by *patent* from the United States, of the same force and effect, in power of disposition, as is given to any other citizens of the United States, and does not show that said lands have not been sold or conveyed by the Pueblo Indians.

Rec., fols. 9–10.

Upon this demurrer judgment was given for the defendant, and upon appeal to the Supreme Court of the Territory said judgment was affirmed.

The case is brought up by writ of error.

Rec., fols. 12–18.

The action is brought upon the eleventh section of the Act of June 30, 1834, which provides "that if any person shall make a settlement on any lands belonging, secured or granted by treaty with the United States to any Indian tribe * * * such offender shall forfeit and pay the sum of one thousand dollars."

4 St., p. 730.

The Mexican title of these lands was confirmed, and a patent given, by Act of December 22, 1858, as follows:

"*Be it enacted, &c.*, That the Pueblo land claims in the Territory of New Mexico, designated in the corrected

lists as " (with others) " Pueblo of Taos, in the county of Taos * * * be, and the same hereby are, confirmed; and the Commissioner of the Land Office shall issue the necessary instructions for the survey of all of said claims, as recommended for confirmation by the said surveyor general, *and shall cause a patent to issue therefor as in ordinary cases to private individuals.* Provided, that this confirmation shall only be construed as a relinquishment *of all title and claim of the United States to any of said lands,* and shall not affect any adverse valid rights, should such exist."

11 St., 374.

By the Treaty of Guadalupe Hidalgo, all *Mexicans* who shall prefer to remain in the transferred territories may elect either to retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. Unless an election to the contrary be declared within one year, they shall be considered as having elected to become citizens of the United States. All not retaining the character of Mexican citizens shall be admitted to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution.

Treaty, art. 8, 9.
9 St., 929–30.

The only other population mentioned in the treaty is described as "*savage tribes*" ("*tribus salvages*"), and their restraint, and responsibility for them, are assumed by the United States.

Art. 11, *ut supra.*

POINTS.

First.—The Act of Congress of June 30, 1834, is inapplicable to the civilized Indians of the subsequently acquired Mexican territory (including New Mexico), and has not been extended by Congress to such population of the new territory.

The title of the act exhibits its nature and purpose, as having wholly to do with Indian communities, to protect their *quasi* independence, and to exclude occasions of war between them and the United States. It is entitled, "*An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.*"

Its provisions have only relation to *regions* in which the Government's title to the land is maintained and the Indian title of occupancy has not been extinguished. Within these regions the purposes and jurisdiction asserted by the act touch only the preservation of the relations between the United States, as the only owners, and the Indian tribes as the only lawful occupants of the soil. Regarded as regulations of personal or property rights of citizens of the United States, they would be unconstitutional as well as oppressive.

See the various sections of the act, especially §§ 1 to 11.

The only extension of this act of 1834 to the Territory of New Mexico, or any part of its population, is found in the Act of February 27, 1851, § 7, as follows:

"That all the laws now in force regulating trade and intercourse with the Indian tribes, *or such provisions of the same as may be applicable,* shall be and the same are hereby, extended *over the Indian tribes* in the territories of New Mexico and Utah."

9 St. 587.

This, certainly, does not cover the case of these little communities of civilized Indians, planted here and there as dependencies upon the Spanish settlements, and occupying little patches of land, like this Taos patent of *five miles square.*

Second.—The *status* of these Pueblo Indians as *Mexican citizens* was indisputably fixed before the acquisition of the territory by the United States, and they are now entitled, under the treaty of Guadalupe Hidalgo, to all the rights and privileges of citizens of the United States.

As to the *status* of these Indians under the Spanish and Mexican law.

U. S. *vs.* Ritchie, 17 How. 538–40, and authorities there cited.

Third.—But the Act of Congress by which the Mexican title of this community to their lands was confirmed, and "all title and claim of the United States to any of said lands" was relinquished, and by which a full title, by patent, was assured to these Pueblo Indians, determines their *status* of citizenship, and excludes the possibility of applying the Indian Intercourse Laws to them.

11 St., 374.

As to effect of a *patent.*

Hooper *vs.* Schevmer, 23 How., 235.
Beard *vs.* Federy, 3 Wall, 492.

Whether, then, the question belongs to the

political department of the Government to determine, or is a judicial one, the case is with the defendant.

The doctrines of this court in relation to Indian tribes, and what such communities are, and how they stand towards the Government and the Constitution, all concur in excluding the Pueblo Indians from any such *quasi* international relations as belong to Indian tribes proper.

Worcester *vs.* States Georgia, 6 Peters, 515.
U. S. *vs.* Rogers, 4 How., 567.
U. S. *vs.* Rillieux's Heirs, 14 How., 189.
U. S. *vs.* Fernandez, 10 Pet., 303.

Last.—The judgment below should be affirmed with costs.

WM. M. EVARTS,
Of Counsel for Defendant in Error.